

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

STEVEN B. ANDERSON,

Petitioner,

Case No. 2:18-cv-11133

HON. TERRENCE G. BERG

v.

THOMAS WINN,

Respondent.

**ORDER DENYING WITHOUT PREJUDICE PETITIONER'S
MOTION FOR EVIDENTIARY HEARING AND DENYING
WITHOUT PREJUDICE PETITIONER'S MOTION FOR ORAL
ARGUMENT**

This is a habeas action brought by a state prisoner under 28 U.S.C. § 2254. Petitioner's motion for an evidentiary hearing, ECF No. 2, seeks to make a factual record in support of his habeas claims including claims of ineffective assistance of trial and appellate counsel. Petitioner also moves for oral argument. ECF No. 10.

In *Cullen v. Pinholster*, 563 U.S. 170, 181–82 (2011), the Supreme Court held that where habeas claims have been decided on their merits in state court, a federal court's review under 28 U.S.C. section 2254(d)(1)—whether the state court determination was contrary to or an

unreasonable application of federal law—is limited to the record reviewed by the state courts. At this point in the proceedings, the Court will deny without prejudice Petitioner’s motion for an evidentiary hearing until such time as it has reviewed the record and Respondent’s answer to determine whether a hearing is warranted. The Court will reconsider the request on its own motion if it determines that some or all of Petitioner’s claims survive review under Section 2254(d). Petitioner does not need to file another motion requesting an evidentiary hearing.

The Court will also reconsider on its own motion whether the decisional process would be aided by oral argument.

Accordingly, Petitioner’s motion for an evidentiary hearing, ECF No. 2, and motion for oral argument, ECF No. 10, are **DENIED WITHOUT PREJUDICE**.

SO ORDERED.

Dated: December 20, 2018 s/Terrence G. Berg
TERRENCE G. BERG
UNITED STATES DISTRICT JUDGE

Certificate of Service

I hereby certify that this Order was electronically filed,
and the parties and/or counsel of record were served on
December 20, 2018.

s/A. Chubb

Case Manager